

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
DONNA HEDGES, *for herself and on behalf of all other* :
persons similarly situated, :

Plaintiff, :

-v- :

ROSEBOX LLC, :

Defendant. :

21 Civ. 974 (JPC)

ORDER OF DISMISSAL

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JOHN P. CRONAN, United States District Judge:

Plaintiff filed the Complaint in this action on February 3, 2021. Dkt.1. The docket reflects that Defendant was served with the Complaint on February 11, 2021, making its answer due by March 4, 2021. Dkt. 5. To date, Defendant has not appeared in this action or answered the Complaint.

On September 24, 2021, the Court issued an Order requiring that Plaintiff file any motion for default judgment by October 8, 2021. Dkt. 6. The Court directed Plaintiff to serve Defendant with a copy of the September 24, 2021 Order and any motion for default judgment. *Id.* The Court further directed Plaintiff to file proof of such service on the docket within two business days of service. *Id.* To date, Plaintiff has filed neither a motion for default judgment nor proof of service of the September 24, 2021 Order on Defendant.

On October 12, 2021, the Court issued an Order directing Plaintiff to inform the Court by November 8, 2021 whether she intends to proceed with this case, and if so, directing the Plaintiff to show cause why her action should not be dismissed for failure to prosecute. Dkt. 7. The Court further instructed Plaintiff that if she fails to comply with the October 12, 2021 Order, the Court may dismiss this action for failure to prosecute without further notice. *Id.* Plaintiff did not file

anything by the November 8, 2021 deadline.

Rule 41(b) of the Federal Rules of Civil Procedure authorizes a court to dismiss an action for failure of the plaintiff “to prosecute or to comply with . . . a court order.” “Although the text of Fed. R. Civ. P. 41(b) expressly addresses only the case in which a defendant moves for dismissal of an action, it is unquestioned that Rule 41(b) also gives the district court authority to dismiss a plaintiff’s case *sua sponte* for failure to prosecute.” *LeSane v. Hall’s Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001); *see also Lewis v. Rawson*, 564 F.3d 569, 575 (2d Cir. 2009) (the power of a district court to dismiss an action for violating a court order “has generally been considered an inherent power, governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases”). Plaintiff has failed to comply with the Court’s September 24, 2021 and October 12, 2021 Orders, and the Court provided notice to Plaintiff that failure to comply with the October 12, 2021 Order would result in dismissal.

Accordingly, the Complaint is DISMISSED without prejudice under Rule 41(b) of the Federal Rules of Civil Procedure. Any pending motions are moot. All conferences are canceled. The Clerk of Court is respectfully directed to close the case.

SO ORDERED.

Dated: November 12, 2021
New York, New York



JOHN P. CRONAN
United States District Judge